

VENABLE LLP
101 CALIFORNIA STREET, SUITE 3800
SAN FRANCISCO, CA 94111
415.653.3750

VENABLE LLP
Steven E. Swaney (SBN 221437)
seswaney@venable.com
101 California Street, Suite 3800
San Francisco, CA 94111
Telephone: 415.653.3750
Facsimile: 415.653.3755

Leonard L. Gordon (*pro hac vice*)
llgordon@Venable.com
Benjamin P. Argyle (*pro hac vice*)
bpargyle@Venable.com
151 W. 42nd Street, 49th Floor
New York, NY 10036
Telephone: 212.307.5500
Facsimile: 212.307.5598

Attorneys for Non-Party Nintendo of America Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

MICROSOFT CORPORATION,

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 23-cv-02880-JSC

**NON-PARTY NINTENDO OF AMERICA
INC. STATEMENT PURSUANT TO
LOCAL RULE 79-5(f) AS TO WHY ITS
CONFIDENTIAL INFORMATION IN
DKT. NOS. 111 AND 111-43
(DEFENDANTS' MEMORANDUM OF
LAW IN OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION) SHOULD
BE FILED UNDER SEAL**

Pursuant to N.D. Cal. Civil Local Rule 79-5, Non-Party Nintendo of America Inc. (“NOA”) hereby submits this Statement as to why its confidential information contained in Defendants Microsoft Corp. and Activision Blizzard, Inc. (collectively, “Defendants”) Memorandum of Law in Opposition to Motion for Preliminary Injunction (Dkt. No. 111, “Memorandum”) and accompanying exhibit (Dkt. No. 111-43) be filed under seal (the “Statement”).

I. ARGUMENT

On June 16, 2023, Defendants filed their Memorandum and accompanying exhibits. (Dkt. No. 111). The Memorandum cites to an NOA witness’s deposition that was taken during the course of discovery in *In the Matter of Microsoft Corp. and Activision Blizzard, Inc.*, before the FTC Office of Administrative Law Judges, Docket No. 9412, the entire transcript of which is attached to Defendants’ Memorandum as Exhibit 47 (Dkt. No. 111-43). NOA previously filed an Unopposed Motion for Order Changing Time on June 22, 2023, to extend the deadline to file its L.R. 79-5 Statement relating to Defendants’ Memorandum to Tuesday, June 27 by 5:00 pm PT (Dkt. No. 188), which the Court granted. (Dkt. No. 190).

The transcript at issue (Dkt No. 111-43) has been marked by Plaintiff as PX7059 for the purposes of these proceedings. Yesterday, on June 26, 2023, NOA filed its L.R.79-5(f) Statement regarding PX7059, and asked the Court to seal PX7059 in its entirety or, in the alternative, to seal portions of the transcript according to the confidentiality groupings described in NOA’s filing. (*See* Dkt. No. 219). For the reasons discussed in yesterday’s Statement (Dkt. No. 219), NOA respectfully requests that the reference to PX7059 on page 11 n.7 of Defendants’ Memorandum be kept under seal. NOA further requests that the entirety of Dkt. No. 111-43 be kept under seal, for the reasons discussed in the Statement NOA filed yesterday regarding PX7059 (Dkt. 219), or, alternatively, that the portions of the transcript designated in Dkt. 219 be redacted and kept under seal.

II. CONCLUSION

For the foregoing reasons, Non-Party NOA respectfully request the Court to keep sealed

1 the reference to NOA's witness transcript at page 11 n.7 of Defendants' Memorandum (Dkt.
2 111). NOA further respectfully requests that the Court keep Dkt. No. 111-43 sealed in its
3 entirety or, alternatively, that the portions of Dkt. No. 111-43 identified as confidential in NOA's
4 Statement (Dkt. No. 219) be redacted and kept under seal.

5 Dated: June 27, 2023

VENABLE LLP

6
7 By: /s/ Steven E. Swaney
8 Steven E. Swaney
9 Leonard L. Gordon (pro hac vice)
10 Benjamin P. Argyle (pro hac vice)
11 Attorneys for Non-Party Nintendo of
12 America Inc.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28